

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN**

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

OP.No. 32379 of 1999(D)

PETITIONERS:

1. ELIYAMMA KURIAN, W/O. LATE T.K. KURIAN,
SKYLARK ESTATE, KARIAMBADI P.O.,
WAYANAD DISTRICT.
2. BIJU KURIAN, S/O. LATE T.K. KURIAN,
SKYLARK ESTATE, KARIAMBADI P.O.,
WAYANAD DISTRICT.
3. GEORGE KURIAN, S/O. LATE T.K. KURIAN,
SKYLARK ESTATE, KARIAMBADI P.O.,
WAYANAD DISTRICT.
4. CHRISTY KURIAN, REPRESENTED BY HIS POWER OF
ATTORNEY HOLDER, MR. BIJU KURIAN,
SKYLARK ESTATE, KARIAMBADI P.O.,
WAYANAD DISTRICT.

BY ADV. SRI.JOMMY THARIAN

RESPONDENTS:

1. SPECIAL THASILDAR (LA),
KARAPUZHA BANASURA SAGAR IRRIGATION PROJECT,
KALPETTA.
2. DISTRICT COLLECTOR OF WAYANAD,
KALPETTA, WAYANAD DISTRICT.
3. STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
TRIVANDRUM.

BY SR. GOVERNMENT PLEADER SMT. R. MEERA.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 05/09/2007, ALONG WITH O.P.No.32380 OF 1999, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

- EXT.P1 : TRUE COPY OF THE NOTICE OF AWARD ISSUED BY
THE 1ST RESPONDENT DTD. 12.05.1997.
- EXT.P2 : TRUE COPY OF THE REFERENCE APPLICATION
FILED BY THE PETITIONERS DTD. 28.05.1997.
- EXT.P3 : TRUE COPY OF THE ORDER NO. C. 386/97 DATED
15.06.1998 PASSED BY THE 1ST RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE.

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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O.P. Nos. 32379 AND 32380 OF 1999
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Dated this the 5th September, 2007

J U D G M E N T

SANKARAN, J.

The lands belonging to the petitioners were acquired. The Collector passed the award. Petitioners received the award amount. Later applications were filed for reference under Section 18 of the Land Acquisition Act. By Ext.P3 order dated 15.6.1998 in O.P.No.32379 of 1999 and Ext.P3 order dated 15.06.1998 in O.P.No. 32380 of 1999, the Special Tahsildar rejected the applications under Section 18 of the Act.

2. The reason stated in Ext.P3 order is that the applications though filed within time, they are not maintainable since the petitioners did not make any protest at the time of acceptance of the compensation by way of cheque.

3. Learned counsel for the petitioners submits that the applications under Section 18 having been filed within time, it should be deemed that there was protest against the compensation awarded. This contention raised by the petitioners is not sustainable in view of the Full Bench decision in **Joseph v. Special Tahsildar (2001 (1) KLT 958)**.

4. A Division Bench of this Court in **Paily v. Special Tahsildar (LA) (1990**

(2) KLT 847), held that a duty is cast on the authorities to alert claimants about their right to protest before accepting the award amount. The Division Bench held thus:

“The above two decisions emphasize, that in order to attract the second proviso to S.33(2) of the Act, it should be evident or shown that the applicant for reference was in a state of mind of reconciliation with the award at the time of receiving the amount, that there is no case for a reference, that this aspect will depend upon all the circumstances of the case and the facts of the particular case should lead to the only conclusion aforesaid, and since in many cases properties are taken from persons, who are not well versed with their rights, nor with the procedure to claim enhancement of compensation, it is necessary for the authorities concerned, while tendering the payment of compensation award to persons interested, to alert them about their rights and it is only when such authorities are satisfied that the claimants accepted the amount without any protest or that the claimant has waived the rights of reference or abandoned the claim for enhanced compensation, the application should be rejected. It appears from the above decisions, that there is a duty cast on the Land Acquisition Authorities to prove “waiver” or “estoppel” and the basic requirement therefor is an intentional act with full knowledge of such right.”

This view is reiterated by the Supreme Court in **Babu Ram v. State of U.P. [(1995) 2 SCC 689]**.

5. The Full Bench in **2001 (1) KLT 958** (supra) held that a protest within the meaning of Section 31(2) of the Land Acquisition Act could be even oral. The

specific case put forward by the petitioners is that at the time of receiving the amount a protest was made. In the light of the decision in **1990 (2) KLT 847** (supra) and also the Full Bench decision in **2001 (1) KLT 958** (supra), it is clear that the authority dealing with the application under Section 18 should consider the question whether there was in reality a protest, either oral or written. There is no case for the petitioners that a written protest was made. Whether there was an oral protest or not is a matter to be decided after hearing the petitioners. Before passing Ext.P3 order no opportunity of being heard was afforded to the petitioners. On this short ground, we set aside Ext.P3 order in both the Original Petitions and direct the first respondent, Special Tahsildar, to dispose of the applications afresh after affording an opportunity of being heard to the petitioners.

Both the Original Petitions are allowed. Consequent to the judgment in the Original Petitions, all interlocutory applications are rejected.

**H.L. DATTU,
CHIEF JUSTICE.**

**K.T. SANKARAN,
JUDGE.**

O.P. Nos. 32379 AND 32380 OF 1999

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**H.L. DATTU, C.J.&
K.T. SANKARAN, J.**

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Dated this the 5th September, 2007

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